fees for the purpose of entitling them to participate in a game of skill the transaction would not constitute an offence under the second part of the section. On the other hand, if the consideration was solely the promise of the appellants to give the player two pennyworth of sweets if the ball fell into the clown's cap it is equally clear that the transaction did constitute an offence."

The case of *Peers* v. *Caldwell* is not, in my opinion, an authority for deciding this case unless the word 'wagering' can be said to mean the same thing as the second part of the section of the Betting Act; and I think that instead of attempting to reconcile the latter parts of the two sections it is better to consider what 'wagering' means, and for this purpose the judgment of Hawkins, J., in *Carlill* v. *Carbolic Smoke Ball Company*, (1892) 2 Q.B.D., at page 490, is of the greatest value. He said:—

"It is not easy to define with precision what amounts to a wagering contract, nor the narrow line of demarcation which separates a wagering from an ordinary contract; but, according to my view, a wagering contract is one by which two persons professing to hold opposite views touching the issue of a future uncertain event, mutually agree that, dependent upon the determination of that event, one shall win from the other, and that other shall pay or hand over to him, a sum of money or other stake; neither of the contracting parties having any other interest in that contract than the sum or stake he will so win or lose, there being no other real consideration for the making of such contract by either of the parties. It is essential to a wagering contract that each party may under it either win or lose, whether he will win or lose being dependent on the issue of the event, and, therefore, remaining uncertain until that issue is known. If either of the parties may win but cannot lose, or may lose but cannot win, it is not a wagering contract."

That definition is quoted with approval by Lord Hanworth, M.R., in *Earl of Ellesmere* v. *Wallace*, (1929) 2 Ch. at page 24. He says:—

"There is no doubt the terms of this definition were carefully chosen. The latter part of it as to neither of the parties having any other interest in the contract than the stake is of great importance. It is a qualification that accords with the words used by Grose, J., in *Good* v. *Elliot* where he speaks of wagers as illegal under the statutes then in force 'where the party has no other interest in the subject matter of them than that which he chooses to create by his bet'."

He then refers to *Brogden* v. *Marriot* and continues:—

"It is clear from other like cases that the substance of the matter is to be regarded."

In my view the transaction exactly comes within the definition of Hawkins, J., above quoted.

The appellant and the player held opposite views as to whether the ball would roll into the numbered hole and they mutually agreed that dependent upon the determination of that event one should win from the other the stake, *i.e.*, the five cents, and the other should hand over a tin of cigarettes. I cannot find that either party had any real interest in that contract other than the stake or cigarettes he would win or lose; there being no other real consideration.

I, therefore, find that the parties were in fact wagering; that the place was used for wagering and became a Common Betting House; and that the Accused was properly convicted under section 3 (c).

The appeal will, therefore, be dismissed.

Conviction affirmed.

Solicitors for the Appellant—*Messrs. Hogan and Ivens.*

[ORIGINAL CIVIL JURISDICTION]

HUGGARD, C.J.

June 9, 1933.

In the Matter of the Will dated the 4th day of November, 1927, and the Codicil dated the 27th day of July, 1929, of Leow Chia Heng deceased.

LIM SOO SIAM

vs.

LEOW YONG MOEY & ORS.

[SINGAPORE ORIGINATING SUMMONS No. 216 of 1932]

Will—construction—Ademption of legacy.

The Testator by his Will directed that his executors and trustees should within 6 months of the impending marriage of his daughter Leow Moey Hong pay to her guardians $10,000 for her marriage expenses and if only part of such $10,000 should be so expended the balance was to be paid to the said Leow Moey Hong on her wedding day for her sole use. Leow Moey Hong was in fact married during the lifetime of the Testator and he paid all her marriage expenses which amounted to $9,445.53. A question arose (*inter alia*) whether the legacy of $10,000 was adeemed either in whole or in part by Leow Moey Hong's marriage during the Testator's lifetime.

Held, that the legacy of $10,000 to Leow Mui Hong for marriage expenses was partially adeemed by Leow Mui Hong's marriage during the Testator's lifetime and by the payment by the Testator himself of her marriage expenses to the extent to which the Testator paid such marriage expenses and that the balance should be paid to her for her sole use. *Pym* v. *Lockyer* followed.

ADJOURNED ORIGINATING SUMMONS.

By this Originating Summons a number of questions were raised for decision by the Court most of which have no general application. The facts and arguments sufficiently appear from the Judgment which is reported in full.

HUGGARD, C.J.—This is a Summons taken out by the Plaintiff as executor of Leow Chia Heng deceased for the determination of certain questions arising under the deceased's Will dated the 4th day of November, 1927, and his Codicil dated 27th day of July, 1929.

Question 1.—

By Clause 8 of his Will the testator devised to his Trustees " my land and houses Nos. 5 and 6 Cumming Street, Nos. 51 and 69 Boat Quay, 6 Circular Road and 29 North Canal Road, all situate in Singapore " upon certain trusts. Actually the testator never owned No. 6 Circular Road but he was the owner of Nos. 9, 29 and 50 Circular Road. Nos. 29 and 50 Circular Road were devised by other Clauses of the Will but No. 6 Circular Road is nowhere mentioned in either the Will or the Codicil. It is stated in the Plaintiff's affidavit of the 1st December, 1932, that No. 9 Circular Road was purchased by the testator on the same date as No. 69 Boat Quay (which is devised by Clause 8 of the Will), that these two houses stand back to back on a strip of land extending from Circular Road to Boat Quay, that the titles to the two houses are comprised in the same title deeds, and that they have never been separately dealt with. In these circumstances I have no hesitation in holding that the figure "6" is palpable mistake for the figure "9" and that the land and house known as No. 9 Circular Road passes under the devise in Clause 8 of the Will. Question 1 is therefore answered in the affirmative.

Question 2.—

By Clause 15 of his Will the testator directed that his trustees should:—

> " within 6 months of the impending marriage of my daughter Leow Moey Hong pay to my (I assume that the testator meant "her") guardians the sum of $10,000 to be expended by them in their discretion on the expenses in connection with such marriage, and if only part of the said sum of $10,000 shall be so expended by my (her) guardians I direct that the balance thereof shall be paid to the said Leow Moey Hong on her wedding day for her sole use."

The testator had previously, by Clause 10 of the Will, given to each of his five daughters, including Leow Moey Hong, legacies of $20,000. Leow Moey Hong was in fact married during the lifetime of the testator and he paid all her marriage expenses, which are stated to have amounted to $9,445.53. The question is whether this legacy of $10,000 lapses or is adeemed (and if adeemed, to what extent) by Leow Moey Hong's marriage during the testator's lifetime and by the payment by the testator himself of her marriage expenses.

This is a case of a parent giving a legacy to or for the benefit of this child for a particular purpose, and afterwards himself applying a sum of money to the same purpose. It is well settled that in such a case the doctrine of ademption applies. The case of *Roome* v. *Roome* (26 English Reports 906) on which Mr. Tan relied in support of his argument against ademption is, I think, distinguishable from the present case on two grounds. In that case:—

(*a*) the relationship between the parties concerned was that of grand-parent and grand-child, not of parent and child;

(*b*) the legacy was not given for one purpose only but for more than one, whereas the sum advanced by the testator in his lifetime was in respect of only one of the purposes contemplated by the legacy.

The fact that subsequently to Leow Moey Hong's marriage the testator executed a Codicil in which he formally confirmed his Will does not seem to me to affect the matter, as by that time the legacy to Leow Moey Hong had already been adeemed. (*Powys* v. *Mansfield*, 40 English Reports at page 971).

As regards the extent to which this legacy is adeemed there is a *prima facie* presumption in such cases that the legacy is deemed only *pro tanto* (*Pym* v. *Lockyer*, 41 English Reports 283; *In re Pollock*, 28 Ch. D. 552) and I think that Leow Moey Hong is entitled to be paid the balance, particularly in view of the fact that Clause 15 expressly provides that any such balance should be paid to her for her sole use.

The Answer to Question 2 will therefore be that the legacy of $10,000 for the wedding expenses of the testator's daughter Leow Moey Hong given by Clause 15 of the Will is adeemed to the extent of the amount expended by the testator in his lifetime on or in connection with the marriage of the said Leow Moey Hong.

Question 3.—

By Clause 19 of his Will the testator directed that his residuary estate should be invested upon trust out of the income to pay certain annuities for a period of 6 years after his death including [under sub-clause (*b*)] the sum of $300 per month to his son Leow Yong Seng. Leow Yong Seng died intestate a little more than a month after the testator, and Letters of Administration to his estate have been granted to his widow the third Defendant. The question is whether this allowance of $300 per month for a period of 6 years ceased on the death of Leow Yong Seng or became payable to his legal personal representative. In my view it is clear that the allowance passed to Leow Yong Seng's legal personal representative. In the words of James, L.J., in *In re Ord*, L.R. 12 Ch. at page 25—" It has never been doubted that a gift of an annuity for a term.....is a gift to the annuitant and his personal representative during the term....."

The Answer therefore to Question 3 is that the allowance in question did not cease on Leow Yong Seng's death but thereupon became payable to his legal personal representative.

Question 4.—

By Clause 19 (*e*) of his Will the testator directed his trustees out of the income of his residuary estate—

> "to pay to each of my daughters named in Clause 10 for a period of 6 years after my death the sum of $2,400 per annum payable quarterly."

One of these daughters Leow Moey Cheng predeceased the testator. The question is whether the annuity is an interest determinable at the death of the daughter and lapsed by her death or whether it is an interest not so determinable and passed to the daughter's legal personal representative.

Although it is not so stated in any of the affidavits, I understand it to be an admitted fact that Leow Moey Cheng left issue and that such issue was living at the date of the death of the testator. This being so, by virtue of section 27 of Ordinance No. 3 (Wills), the gift to Leow Moey Cheng does not lapse but takes effect as if Leow Moey Cheng had died immediately after (instead of before) the testator, there being no contrary intention appearing in the Will. The principle therefore applying in the case of Question 3 applies also to Question 4, and the Answer is that the annuity in question is an interest not determinable at the death of Leow Moey Cheng and accordingly passed to her legal personal representative.

Question 5.—

By Clause 20 of his Will the testator directed his trustees after a period of 6 years from his death—

> "to pay to each of my daughters named in Clause 10 as shall at that date be alive the sum of $20,000."

The period of 6 years mentioned above has not yet expired but the trustees take this opportunity of asking for a decision as to whether each of the legacies in question is contingent upon the respective legatees being alive at the expiration of the aforesaid period of 6 years. In my view the language of Clause 20 of the Will is clear and unambiguous and the Answer to the Question is in the affirmative.

Question 6.—

This Question relates to the order in which, in the event of a deficiency of the estate in meeting all the devises and bequests contained in the Will and Codicil, those various devises and bequests are liable to abate.

The first point for decision is as to the relative positions of the specific devisees under Clauses 8, 9, 13 and 21 of the Will and Clauses 1 and 2 of the Codicil, and the pecuniary legatees under that part of the Will anterior to Clause 18 and including the pecuniary legatees under Clauses 3 and 4 of the Codicil. On this point it seems to me that the intention of the testator—which is the primary consideration—is clearly ascertainable from the terms of Clause 18 of the Will. In that Clause the testator says:—

> "and from and after the expiration of the said period of six years my trustees shall sell, call in and convert into money all my real and personal estate not herein otherwise specifically disposed of, and subject to the payment of my debts, funeral and testamentary expenses and the provisions hereinbefore contained I direct that my trustees shall stand possessed of the proceeds of the said sale calling in and conversion," etc., etc.

It appears to me that the words "not herein otherwise specifically disposed of" necessarily refer to the specific devises contained in Clauses 8, 9, 13 and 21 of the Will. It was laid down in *Conron* v. *Conron* (7 H.L.C. 168) that where there is a specific devise or a specific legacy in a Will the presumption is that it is the intention of the testator that the devisee or legatee shall have it, as it is given, in its integrity and without derogation. So that in the present case we have not only got a presumption in favour of the specific devisees but we have also, as it appears to me, the clearly expressed intention of the testator that the property specifically devised should be excluded from the subsequent direction. I hold therefore that the decisions in *Spong* v. *Spong* (1 Dow & Clark 365) and *Conron* v. *Conron (supra)* apply to this case and that the specific devisees, including the specific devisees under Clauses 1 and 2 of the Codicil, are entitled to priority.

Now, as to the position of the pecuniary legatees under Clauses 4, 10, 11, 12, 14, 15 and 16 of the Will and Clauses 3 and 4 of the Codicil, I turn again to the extract from Clause 18 of the Will quoted above. I find that a definite charge is created in favour of the testator's "debts funeral and testamentary expenses and the provisions hereinbefore contained." It seems to me that the words "the provisions hereinbefore contained" must refer to the pecuniary legacies given by the Clauses of the Will anterior to Clause 18 and therefore the charge created covers these legacies. As to the property to which that charge extends I have come to the conclusion that it extends to the general estate of the testator excluding only those portions of the estate which are specifically devised by the Will and Codicil. It was urged very ably by Mr. Tan and Dr. Withers Payne that these pecuniary legacies are charged on the general estate of the testator and that the legatees are therefore entitled to be paid in full and in priority to the specific devisees, and I was referred to numerous authorities as supporting their arguments, notably:—

Jarman on Wills, 7th Ed., 1957.
Greville v. *Browne*, 7 H.L.R. 689.
In re Bawden, 1894, 1 Ch. D. 693.
In re Roberts, 1902, 2 Ch. 834.
In re Emmerton, 1862, 7 L.T.R. 301.
In re Kempster, 1906, 1 Ch. 446.

I do not propose to discuss these various authorities in detail. Needless to say I have very

carefully considered all of them before coming to any final conclusion in this matter, but I do not think that the principles therein laid down, so far as they might be applicable to the present case, can be held to prevail against what I apprehend to be the manifest intention of the testator as indicated in Clause 18 of the Will.

The next point for consideration is the position of the pecuniary legatees under Clause 20 of the Will. The question is whether these legacies rank with the legacies given by Clause 10 and are charged on the general estate to the same extent as those earlier legacies or whether they are payable out of the residuary estate. Here again we have to try to ascertain the intention of the testator. I agree with the proposition that the fact that these legacies are given *after* the residuary devise and bequest does not necessarily preclude them from being charged on the general estate, but when one reads Clauses 19, 20 and 21 together, and particularly when one reads Clauses 20 and 21 together (the latter of which refers to "the balance of my residuary estate"), one is, I think, inevitably driven to the conclusion that the testator, in inserting Clause 20 where he did, intended that these legacies should be paid from the residuary estate as defined by Clause 19 and should not rank with the legacies given by Clause 10.

The only remaining point to consider is the position of the annuitants under Clause 19 of the Will, and the question here is whether these annuities are charged on the corpus of the residuary estate or only on the income thereof. In Clause 19 of the Will the testator directed the payment of these annuities out of the income of his residuary estate, but the Will contains no direction as to any surplus income, and when we come to Clause 21 we find that the testator proceeds to deal with the *balance* of his residuary estate after payment of all specific and pecuniary legacies *and after due provision is made for the payment and continuance of all annuities* bequeathed by the Will. In my view it is clear that these annuities are charged on the corpus of the residuary estate. This view has the support of ample authority and it is only necessary to mention a few of the cases, for example:—

Birch v. *Sherratt*, 2 Ch. App. 644.
Wormald v. *Muzeen*,17 Ch. D. 107.
Re Mason, 8 Ch. D. 411.
In re Howarth, 1909, 2 Ch. D. 19.
In re Young, 1912, 2 Ch. D. 479.

In *Stelfox* v. *Sugden* (70 English Reports, 410) it was held that the annuity was payable out of rents and income, and not out of corpus, but that case seems to me to be clearly distinguishable from the present one and from those cited above, because there the Will expressly provided for the destination of the surplus income during the life of the annuitant and it was on that point that the decision was based. In other respects it supports the view I have taken in the present case (*vide* Judgment of Page Wood, V.C., at pages 412 and 413).

The Answer to Question 6 is therefore that the devises and bequests in the Will and Codicil are liable to abate in the following order:—

(*a*) the gift of the balance of the residuary estate contained in Clauses 21 and 22 of the Will;
(*b*) the legacies given by Clause 20 and the annuities given by Clause 19 of the Will;
(*c*) the gift of $50,000 to charity contained in Clause 18 of the Will;
(*d*) the pecuniary legacies contained in that part of the Will anterior to Clause 18, including the additional pecuniary legacies given by Clauses 3 and 4 of the Codicil;
(*e*) the specific devises and bequests given by Clauses 8, 9, 13 and 21 of the Will and Clauses 1 and 2 of the Codicil.

Order accordingly.

Solicitors for the Plaintiff—*Messrs. Chan & Eber.*

Solicitors for the 1st Defendant—*Messrs. John G. Campbell & Co.*

Solicitors for the 2nd & 4th Defendants—*Messrs. Donaldson & Burkinshaw.*

Solicitors for the 3rd Defendant—*Messrs. Johannes and Sammy.*

Solicitors for representative of pecuniary legatees —*Messrs. Drew & Napier.*

Solicitors for annuitants, other than daughters— *Messrs. Allen & Gledhill.*

Solicitors for infant representing remaining legatees other than 1st Defendant—*Messrs. Zehnder Brothers.*

Solicitor for the 5th Defendant—*S. C. Goho, Esq.*

[APPELLATE CIVIL JURISDICTION]

WHITLEY, J.
October 21, 1932.

TERRELL, J., MILLS and COBBETT, JJ.
June 23, 1933.

RE: YAP E. BOON.

[SINGAPORE BANKRUPTCY No. 253 of 1931]
[CIVIL APPEAL No. 4 of 1933]

Ordinance No. 44 (Bankruptcy)—Receiving and Adjudication Orders—Petitioning Creditors' debt not in existence at date of act of Bankruptcy —Annulment of Orders.

When Receiving and Adjudication Orders have been made against a debtor at the instance of a creditor whose debt was not in existence at the date of the act of bankruptcy relied on, no receiving or adjudication orders will be made; and if such orders have been made they will be annulled; as the Court has no discretion to refuse to set aside such orders if wrongly made.

Motion.

On 17th November 1930 one Yap E. Boon committed an available act of bankruptcy. Subsequently on the 10th January, 1931 he